

## Appendix 1 – CRTC Questions

For the convenience of the Commission and other parties, Friends has answered all questions in which we believe we have appropriate knowledge and in which our supporters have an interest. These answers include repetition of, or reference to, points we have made in our main submission, as well as points we did not address in that submission.

Friends notes that the framing of many questions relates to criteria that are either not apparent in the objectives of the *Broadcasting Act*, or, if present, they relate to the Act only indirectly.

We do not understand why, in such an important forward-looking proceeding, the Commission would not frame its questions almost exclusively in relation to their impact on the fulfillment of the objectives of the *Act*.

Accordingly, when appropriate, Friends has reframed and answered questions in the context of their relation to the objectives of the *Act*.

Given our extensive reference to these objectives, we cite them in their entirety here:

### **Broadcasting Policy for Canada**

3. (1) It is hereby declared as the broadcasting policy for Canada that
  - (a) the Canadian broadcasting system shall be effectively owned and controlled by Canadians;
  - (b) the Canadian broadcasting system, operating primarily in the English and French languages and comprising public, private and community elements, makes use of radio frequencies that are public property and provides, through its programming, a public service essential to the maintenance and enhancement of national identity and cultural sovereignty;
  - (c) English and French language broadcasting, while sharing common aspects, operate under different conditions and may have different requirements;
  - (d) the Canadian broadcasting system should
    - (i) serve to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada,
    - (ii) encourage the development of Canadian expression by providing a wide range of programming that reflects Canadian attitudes, opinions, ideas, values and artistic creativity, by displaying Canadian talent in entertainment programming and by offering information and analysis concerning Canada and other countries from a Canadian point of view,
    - (iii) through its programming and the employment opportunities arising out of its operations, serve the needs and interests, and reflect the circumstances and aspirations, of Canadian men, women and children, including equal rights, the linguistic duality and multicultural and multiracial nature of Canadian society and the special place of aboriginal peoples within that society, and
    - (iv) be readily adaptable to scientific and technological change;
  - (e) each element of the Canadian broadcasting system shall contribute in an appropriate manner to the creation and presentation of Canadian programming;

(f) each broadcasting undertaking shall make maximum use, and in no case less than predominant use, of Canadian creative and other resources in the creation and presentation of programming, unless the nature of the service provided by the undertaking, such as specialized content or format or the use of languages other than French and English, renders that use impracticable, in which case the undertaking shall make the greatest practicable use of those resources;

(g) the programming originated by broadcasting undertakings should be of high standard;

(h) all persons who are licensed to carry on broadcasting undertakings have a responsibility for the programs they broadcast;

(i) the programming provided by the Canadian broadcasting system should

(i) be varied and comprehensive, providing a balance of information, enlightenment and entertainment for men, women and children of all ages, interests and tastes,

(ii) be drawn from local, regional, national and international sources,

(iii) include educational and community programs,

(iv) provide a reasonable opportunity for the public to be exposed to the expression of differing views on matters of public concern, and

(v) include a significant contribution from the Canadian independent production sector;

(j) educational programming, particularly where provided through the facilities of an independent educational authority, is an integral part of the Canadian broadcasting system;

(k) a range of broadcasting services in English and in French shall be extended to all Canadians as resources become available;

(l) the Canadian Broadcasting Corporation, as the national public broadcaster, should provide radio and television services incorporating a wide range of programming that informs, enlightens and entertains;

(m) the programming provided by the Corporation should

(i) be predominantly and distinctively Canadian,

(ii) reflect Canada and its regions to national and regional audiences, while serving the special needs of those regions,

(iii) actively contribute to the flow and exchange of cultural expression,

(iv) be in English and in French, reflecting the different needs and circumstances of each official language community, including the particular needs and circumstances of English and French linguistic minorities,

(v) strive to be of equivalent quality in English and in French,

(vi) contribute to shared national consciousness and identity,

(vii) be made available throughout Canada by the most appropriate and efficient means and as resources become available for the purpose, and

(viii) reflect the multicultural and multiracial nature of Canada;

(n) where any conflict arises between the objectives of the Corporation set out in paragraphs (l) and (m) and the interests of any other broadcasting undertaking of

the Canadian broadcasting system, it shall be resolved in the public interest, and where the public interest would be equally served by resolving the conflict in favour of either, it shall be resolved in favour of the objectives set out in paragraphs (l) and (m);

(o) programming that reflects the aboriginal cultures of Canada should be provided within the Canadian broadcasting system as resources become available for the purpose;

(p) programming accessible by disabled persons should be provided within the Canadian broadcasting system as resources become available for the purpose; (q) without limiting any obligation of a broadcasting undertaking to provide the programming contemplated by paragraph (i), alternative television programming services in English and in French should be provided where necessary to ensure that the full range of programming contemplated by that paragraph is made available through the Canadian broadcasting system;

(r) the programming provided by alternative television programming services should

(i) be innovative and be complementary to the programming provided for mass audiences,

(ii) cater to tastes and interests not adequately provided for by the programming provided for mass audiences, and include programming devoted to culture and the arts,

(iii) reflect Canada's regions and multicultural nature,

(iv) as far as possible, be acquired rather than produced by those services, and

(v) be made available throughout Canada by the most cost-efficient means;

(s) private networks and programming undertakings should, to an extent consistent with the financial and other resources available to them,

(i) contribute significantly to the creation and presentation of Canadian programming, and

(ii) be responsive to the evolving demands of the public; and

(t) distribution undertakings

(i) should give priority to the carriage of Canadian programming services and, in particular, to the carriage of local Canadian stations,

(ii) should provide efficient delivery of programming at affordable rates, using the most effective technologies available at reasonable cost,

(iii) should, where programming services are supplied to them by broadcasting undertakings pursuant to contractual arrangements, provide reasonable terms for the carriage, packaging and retailing of those programming services, and

(iv) may, where the Commission considers it appropriate, originate programming, including local programming, on such terms as are conducive to the achievement of the objectives of the broadcasting policy set out in this subsection, and in particular provide access for underserved linguistic and cultural minority communities.

## **Regulatory Policy**

5. (2) The Canadian broadcasting system should be regulated and supervised in a flexible manner that

- (a) is readily adaptable to the different characteristics of English and French language broadcasting and to the different conditions under which broadcasting undertakings that provide English or French language programming operate;
- (b) takes into account regional needs and concerns;
- (c) is readily adaptable to scientific and technological change;
- (d) facilitates the provision of broadcasting to Canadians;
- (e) facilitates the provision of Canadian programs to Canadians;
- (f) does not inhibit the development of information technologies and their application or the delivery of resultant services to Canadians; and
- (g) is sensitive to the administrative burden that, as a consequence of such regulation and supervision, may be imposed on persons carrying on broadcasting undertakings.

Within subsection 3(1) and 5(2), each of the separate policy objectives has equal weight. The Commission is obliged by its statutory objects to implement the broadcasting policy set out in subsection 3(1) and, in so doing, to also have regard to the regulatory policy set out in subsection 5(2). In case of conflict the *Act* states that the broadcasting objectives in subsection 3(1) are to be given priority status over the objectives of the regulatory policy<sup>1</sup>.

Accordingly, Friends will reference in the following only subsection 3(1) objectives.

### **Maximizing choice and flexibility**

#### **Q1. What are the potential effects, both positive and negative, of the proposed approach set out in paragraphs 40 to 48 above on different elements of the broadcasting system, including consumers, discretionary services, BDUs, the production sector, OLMCs and ethnic broadcasters?**

As outlined in our brief at section 4, Friends is not necessarily opposed to a basic-basic as set out in 41 to 43 of the Notice, but sees little benefit and great potential harm in the approach to pick-and-pay set out in paragraphs 44 to 48. In particular, Friends believes that the notion of *predominance of Canadian programming services* is a fundamental objective of the *Act* and must not be diminished.

By way of historical context, it is worth noting that the Commission approved many of the first round of US specialty services because BDUs were successful in convincing the Commission that these channels would become drivers for packages that contained Canadian services. This is, in fact, exactly what has happened.

US findings on pick and pay show both that pick and pay can cause revenue declines of up to 50% and that consumers do not save money - they just pay more for the popular channels and get fewer channels as a result.

The existing pick and pay packages offered by companies like Videotron are not a precedent for mandatory pick and pay in English-Canada. They do not offer access to all channels just a select group of channels, containing very few of the most popular US services.

#### **Q2. Should this approach apply differently to different types of BDUs (e.g., exempt**

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<sup>1</sup> We note that in it's 2006 Section 15 Report to government on *The future environment facing the*

**BDUs and DTH BDUs)?**

No.

**Q3. Which local television stations should be included in the small basic service offered by DTH BDUs?**

Current rules that require DTH to carry local TV services should be retained.

**Q4. What effect would this approach have on the affordability of television services? Is there a particular impact on the affordability of sports services, for example?**

In respect of a basic-basic, for many Canadians, this would presumably make such service cheaper, as it would remove non-mandatory carriage 9(1)(h) discretionary services.

In respect of pick-and-pay, it appears that touted benefits to the consumer may be illusory, as the per-service cost increases with less overall distribution. This could, however, benefit sports abstainers to the detriment of sports viewers.

**Q5. What effect would this approach have on the cost of program acquisition?**

Presumably the market would react on the basis of supply and demand. Services with fewer subscribers and less overall revenue would have less money for program acquisition. Prices for programs would come down where there is less competition, but possibly go up for key signature programming, regardless.

**Q6. Should the Commission establish any requirements regarding the size of the various packages that consumers may choose to build (build-your-own-package options)?**

Friends believes there should not be a requirement for full pick-and-pay (i.e. the ability to pick individual channels with no *predominance* requirements or minimum package sizes) after subscribing to basic.

If the Commission was to a mandate “pick a pack”, Friends believes that it would need to have minimum requirements, such as a minimum of 10 services and *predominance* of Canadian services (at least 5 of 10).

However, on balance, Friends believes the risks associated with such a mandated approach outweigh the benefits.

BDUs are better positioned than the Commission to determine what packages are appropriate in the evolving competitive marketplace. If they fail to make the right choices, more Canadians will migrate to OTT.

For example, Friends understands that many Canadians already have the ability to “add” individual Canadian services after they subscribe to certain packages. This ability to add a single Canadian service, *in addition to packages*, should continue.

**Q7. What role, if any, should the Commission or others play in ensuring that a small basic service and packaging options are available and well-promoted to all consumers?**

None. Competition between, and the different interests of different industry parties should be sufficient.

**Q8. What role, if any, should the Commission play regarding penetration-based pricing agreements?**

No more than its current role in mediating or arbitrating disputes.

**Q9. What customer-care system upgrades would be required? How long would they**

**take to implement? What would be the cost?**

This is an area that BDUs and services are better able to comment on.

**Q10. Are there barriers to implementing the Commission’s proposed approach? What is the earliest feasible timeframe to implement this approach, in light of all the possible implications?**

In Friend’s view, the biggest and most important “barrier” is the *Broadcasting Act*.

The mandate of the Commission is to regulate and supervise the Canadian broadcasting system in accordance with the objectives of the broadcasting policy set out in subsections 3(1) of the Act.

This mandate is provided under the Act specifically to avoid a situation, like the present, where the Commission is being pressed to follow the policies, if not the focus group-generated whims, of the party in power.

The policy direction issued by the Governor in Council, pursuant to section 8 of the *Act* borders on, if not beyond, what is supposed to be an order of “general application on broad policy matters”. It is no secret that the Harper Government wants the CRTC to “unbundle” and require pick-and-pay, and in asking the Commission “how the ability of Canadian consumers to subscribe to pay and specialty television services on a service-by-service basis can be maximized” that request has been made abundantly clear.

**Q11. How can BDUs continue to give priority to the carriage of Canadian programming services? Is there a need to maintain the requirement that each subscriber receives a preponderance of Canadian services?**

By maintaining current rules. Yes. It’s the law of the land.

**Q12. How should the Commission and Canadians measure the success of the Commission’s approach with respect to ensuring choice and flexibility in the selection of programming services?**

The only appropriate measure of success is that of furthering the objectives of the *Act*, in particular, in this case, sections 3(1)(a) through (j) and (t).

**Access to non-Canadian programming services**

**Q13. Is there a way to remove barriers to the entry of more non-Canadian programming services into Canada without an undue negative impact on the Canadian television system?**

No. It is not worth taking the risk. (See analysis provided in Peter Miller’s Environmental Scan.)

If enacted, such an ‘open skies’ proposal would seem to make it possible for any US service to gain access to Canadian homes as long as it had distribution. If that is, in fact, the case then why would any existing US service that has entered into a partnership agreement with a Canadian company maintain the partnership beyond the expiration of the existing agreement when the US service could then come into Canada directly.

This is but one of the many “unintended consequences” that Friends fears might result from major changes being made all at the same time to policies that are working for all existing stakeholders.

The Commission’s focus should be on those changes which have taken place in television since the last review, including those that that were never contemplated in the Broadcasting Act when it was originally written or revised.

**Q14. What are the possible approaches to authorizing non-Canadian services for distribution in Canada, particularly in the absence of genre requirements for Canadian services?**

The Commission should maintain genre protection and the current rules on entry of foreign services.

**Q15. Should the Commission choose to adopt a test such as that proposed in paragraph 52 above, what evidence should parties be required to provide?**

There is no need to change the current test. The proposed test reverses the onus and would likely lead to a flood of entry of U.S. service (and applications from Canadian services to oppose same).

**Q16. How should the Commission and Canadians measure success and determine whether the Commission's approach is providing access to non-Canadian programming services without any undue negative impact on the Canadian television system?**

The only appropriate measure of success is that of furthering the objectives of the *Act*, in particular, in this case, sections 3(1)(a) through (j) and (s), (t).

**Simultaneous substitution**

**Q17. Should simultaneous substitution be maintained? If so, why is it still beneficial and necessary, and why do its benefits outweigh its costs and other drawbacks?**

The answer can only be 'yes'.

Notwithstanding the significant increase in viewing to Canadian programming that has taken place since the inception of simultaneous substitution in 1972, it must be remembered that the engine driving private broadcasters is still American network programming. While the margins on this programming have generally dropped due to additional competition (which has driven the cost of programming up), the revenue contribution of this programming is undeniable. The Commission's creation of simultaneous substitution was an elegant solution to a complex problem in that it protected the program rights that Canadian broadcasters had purchased with a process that was largely seamless and did not result in Canadian broadcasters requesting black outs of US border signals. At the same time revenues flowing from Canadian advertisers to US border station were slowly reduced to a trickle and largely repatriated to the Canadian stations that owned the rights.

Should simultaneous substitution no longer exist, Canadian stations would lose millions in revenues with the direct beneficiaries being the US border stations who would now be back in business.

A separate rights market is therefore fundamental to the Canadian broadcasting system, and simulcast is fundamental to maintaining a separate rights market. The small inconvenience of technical infrastructure and responding to complaints from a few viewers is massively outweighed by the strengthening of the system - including the revenue benefit to the industry that Friends understands to be approximately \$300 million annually. (Further comment is provided in Section 4 of our Brief)

**Q18. What is the current and prospective value of simultaneous substitution to broadcasters?**

Addressed above.

**Q19. Are there alternatives to simultaneous substitution, such as non-simultaneous substitution (the replacement of the same program regardless of when it is**

**broadcast), that could fulfill the public policy objectives that simultaneous substitution was implemented to fulfill? If so, what would these alternatives be, why are they necessary, and how could they be implemented?**

Friends understands that NSS is both possible and could strengthen the Canadian rights market and increase revenue benefit.

**Q20. If the Commission were to decide to eliminate simultaneous substitution, how, and in what timeframe, should this change be implemented?**

It should not, on any time-frame.

In any event, if the Commission thinks the future of simulcast may be time-limited, this question should be addressed when that time comes.

**Q21. Would the elimination of simultaneous substitution have unintended consequences for French-language television services?**

Friends understands that French-language television services also rely on simulcast and derive benefit from it – particularly in smaller market services against the importation of distant signals. Therefore, elimination of simulcast could well be harmful, and impact negatively on the ability of such services to meet their obligations under the *Act*.

**Q22. How should the Commission and Canadians measure success and determine whether the Commission’s new approach is achieving its objectives?**

The *only* appropriate measure of success is that in furthering the objectives of the *Act*, in particular, in this case, sections 3(1)(a) through (j) and (s), (t).

### **Fostering local programming**

**Q23. Are there alternative ways of fostering local programming? What role, if any, should the Commission play to ensure the presence of local programming? What measures could be put in place?**

Friends believes that the fostering of local programming is one of the most important results of the Commission’s historic furtherance of the objectives of the *Act*, and one that should continue.

There is no doubt local programming is at risk. Losses in conventional TV revenue, the Commission’s decision to cancel the LPIF, and CBC’s financial predicament, have combined to make the situation worse, if not dire.

In our brief we have suggested that it may be time to consider a model that funds “local expression” via direct support for local TV stations in need rather than exclusively through the community channel.

Specifically we have proposed that:

1. The Commission reduce eligible community channel contributions to 1% of BDU revenues<sup>2</sup> and redirect the remaining 1% to CBC for local programming (with up to 0.2% of this going to independent small market local TV stations), an amount equal to approximately \$63 million annually.
2. DTH be required to match revised cable obligations towards “local expression” by directing a full 1% of revenues to local programming<sup>3</sup>. This would bring in an incremental \$14 million.

We look forward to further discussing this possible approach, and suggestions of other

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<sup>2</sup> This should include mandatory contributions to independent community channels.

<sup>3</sup> This 1% would include the current 0.4% directed to the small market local programming fund.

parties, at the hearing.

**Q24. Is regulatory intervention necessary to maintain access to local television stations and, if so, how could this best be achieved? Given that the vast majority of Canadians receive television services through a cable or satellite subscription, are there compelling reasons to maintain and support OTA transmission? Would the discontinuation of OTA transmission allow local television stations to devote more resources to programming? If the Commission determines that OTA transmission should no longer be required, under what timeframe should this be implemented?**

Current rules should not be diluted.

Friends believes that the need for OTA transmission should be evaluated on a case by case basis. Even 5% of Canadians – many of whom are presumably watching OTT - is a *seven-digit* number. Ensuring they can access OTT, and maximizing advertising revenues from that viewing, would both seem important. That said, a small station that might otherwise go dark should, perhaps, be granted greater flexibility.

Generally speaking, however, if local broadcasters, and particularly local CBC stations, are permitted to turn off their transmitters, then some provision should be made for local viewers to still receive these services for free. This could be a free basic BDU tier (consistent with the approach taken in some markets with HD transmission) or free online streaming (perhaps with a data cap exemption).

**Q25. What role, if any, should the Commission play to preserve the diversity of local television stations in the French-language market? Should measures be adopted specifically for this linguistic market?**

Friends does not have a specific suggestions, but agrees that maintaining diversity of local television stations in the French-language market is important.

**Q26. Is a different approach needed for independent local television stations? What measures, if any, could be put in place?**

Virtually all US network programming is sold nationally to the vertically integrated companies leaving the smaller local stations to purchase those few programs that are left over or non-network programming available from other sources. Independent stations have often tried to cobble together buying groups but consolidation has made these groups smaller and smaller. Programming rights have always been market driven and Friends does not see an appropriate role for the Commission in the program rights area, which in our view should continue to be market driven.

The creation of the Local Program Improvement Fund (LPIF) and the funding that it provided, ensured that many smaller markets continued to have local programming and especially news. Ironically, the two largest participants in the fund were the CBC and CTV (now Bell Media). We strongly believe that if the LPIF program had been continued but *only* for the benefit of the independent stations in the qualifying markets that the consumer cost of the fund would drop significantly and several smaller markets would continue to receive funding for their local programming.

As discussed in Q. 23, above, we therefore support the notion of recreating a funding program, out of BDU contributions, towards smaller independent local broadcasters.

**Q27. How should the Commission and Canadians measure success in fostering local programming and allowing broadcasters to revitalize their business models?**

The only appropriate measure of success is that in furthering the objectives of the *Act*, in particular, in this case, sections 3(1)(a) through (j) and (l), (m), (n), (s), (t).

**Financing and promoting compelling Canadian programming**

**Q28. How will programs be delivered in the future (i.e. in five years and 10 years from now) and who will be the future aggregators and curators of programming?**

Please see Miller Environmental Scan for some views on this question.

Most important, from Friends' perspective, for the future of the Canadian broadcasting system:

- The nature of TV programming is not expected to change for the foreseeable future;
- A majority, if not still a significant majority, of viewing will be to linear services well into the future; and
- While future aggregators and curators in Canada may well include more OTT services such as Netflix (Hulu Plus, Amazon Prime etc.) and new players such as YouTube, Facebook and Twitter, Canadian BDUs and ISPs should still be in a position to successfully compete for Canadian viewers.

**Q29. Do funding mechanisms for Canadian programming need to be modified to take into account changes in the way Canadian programming is watched?**

Friends believes that over the next three to five years, there should not be any material reduction in the capacity of the system to support the objectives of the *Act*, and that therefore (other than support for local programming and public broadcasting) funding mechanisms for Canadian programming would not appear to need major modification.

Friends also believes that the broadcasting system can adapt and remain viable well into the future, although the overall ability to contribute will likely diminish, and the health of its elements differ. It is premature, however, to consider modifying funding mechanisms for Canadian programming (other than support for local programming and public broadcasting) at this time.

**Q30. Are any regulatory measures required to encourage the production, promotion or presentation of new, compelling and innovative Canadian programming? If so, what would those measures look like?**

Existing regulatory measures have been successful and will continue to be so for at least 3-5 years. They should not be changed in a major way, and certainly not materially reduced, for existing regulated-broadcasting services.

In particular, given that linear programming will continue to be the way most TV is watched over this period, exhibition requirements should remain. There may, however, be a case for reducing OTA to 50% Cancon given the revenue challenges of that sector.

More importantly, it is time to ensure that OTT and other Internet services in the TV value chain contribute appropriately. As outlined in Friends' brief, the CRTC should:

1. Review of the New Media Exemption Order. As is evidenced by the Environmental Scan, the notion that new media (including OTT) are merely complementary and do not pose a threat to traditional broadcasting licensees' ability to meet their obligations is no longer tenable. As a result, Friends submits that the CRTC is legally obliged to revisit the New Media Exemption Order and determine what contributions pursuant to the Broadcasting Act would be appropriate for OTT services and other internet-based TV players;
2. In reviewing the New Media Exemption Order, assert its jurisdiction and require OTT services operating in Canada to direct a minimum 10% of Canadian revenues to a combination of Canadian programming expenditures and third parties such as the CMF and CBC/SRC. Friends recommends that a full 5% be directed to the CBC, exclusively for PNI; and

3. Start a separate process to prepare a report to government, under the CRTC's own initiative, on the 'future of TV'. Such a report would update the Commission's 2006 report, and make appropriate recommendations. In that vein, Friends urges the Commission to ask government to:
  1. Provide the CBC/SRC with predictable and sustainable funding sufficient to carry out its statutory mandate as the national public broadcaster; and
  2. Ensure that internet players, beyond OTT contribute appropriately to the broadcasting system.

**Q31. Would these measures affect the purchase of program rights and licence fees paid to independent producers?**

There are many ways independent producers could be affected by the changing TV environment and new regulatory measures. As noted in Miller Environmental scan, these include:

1. Volume of production. As/if viewing shifts to on-demand, exhibition quotas are reduced, linear services consolidate, and demand for Canadian programs decreases, volume of "traditional" TV production will decrease;
2. Type of production. Opportunities in branded content and interactive digital media may fill some of this void. The extent to which it does will largely depend on the extent to which producers are successful in tapping into international markets; and
3. Fees for production. There is no evidence that production budgets for the quality signature shows (high-end drama, reality, factual) are decreasing. In fact, if anything, they have been increasing in Canada to attract greater audiences and in light of international funding and exhibition. Low-end user-generated content (UGC) type production is already produced at far lower costs than even low cost TV. Whether this will result in lower costs for already low cost TV (e.g. magazine, talk shows) is unclear – it may affect volume more. Mid-range TV – particularly children's - may be most at risk. There is evidence that it faces both volume declines and budget declines.

**Q32. Should the Commission encourage the production of certain types of programs as it has done in the past? If so, which types of programs should be supported?**

Over the years, the Commission has found various ways to support various types programs (that are deemed worthy or in need of extra support) under different types of monikers – "underrepresented", "priority programming" and now "programming of national interest". Typically, local programming has not been included in these categories (as is the case today), but has been nevertheless been deemed worthy of support.

Friends believes that the same kinds of programs the Commission has supported in the past – local, drama, documentary, children's – will continue to be in need and worthy of support in the future.

For the next 3 to 5 years, with the possible exception of new measures for children's or feature film, the current approach to minimum exhibition requirements, CPEs and PNI appears to remain appropriate.

However, if our recommendations for increased funding of the CBC (including those directed at government) are implemented, then this could be relied upon to deliver a larger proportion of "compelling" or "distinctive" programming, in which case expectations on private networks to do so could ultimately be reduced somewhat as part of a quid pro quo,

Beyond the next 3 to 5 years, new or narrower priorities may have to be chosen, but that should involve a broader set of government stakeholders than just the CRTC – they

would need to include, Canadian Heritage, CMF, Telefilm, NFB, and provincial agencies among others.

**Q33. What form should incentives take? Would eliminating certain requirements, for example, exhibition requirements, be an effective and appropriate incentive for producing Canadian programming or programming of certain types?**

No, as already discussed, given that linear viewing can be expected to remain the primary means by which Canadians watch over the next 3 to 5 years, the Commission should maintain exhibition requirements.

No other material existing requirement warrants removal over the next 3 to 5 years.

**Q34. If exhibition requirements are generally reduced or eliminated, would there still be a need for specific exhibition requirements for particular types of programming, e.g. local or children's programming?**

These may be required in any case.

**Q36. Is the current way to calculate contributions to Canadian programming still appropriate? For example, should the Commission update its definition of broadcasting revenues to reflect all broadcasting activities by licensees?**

It should be updated to include all broadcasting revenue (exempt or regulated), and in return (as discussed elsewhere) CPE qualifying expenditures should be similarly updated.

**Q37. Does the current funding model for community channels continue to be appropriate?**

As discussed in our Brief at section 6 permitted community channel contribution levels should be reduced to allow for a redirection of revenues to other “local reflection”, namely local news.

**Q38. How should the Commission and Canadians measure success with respect to encouraging the production of compelling Canadian programming?**

The only appropriate measure of success is that in furthering the objectives of the *Act*, in particular, in this case, sections 3(1)(a) through (n), (s) and (t).

**Making television services available to underserved audiences**

**Q39. Do OLMCs have appropriate access to a diversity of programming services in their language? If not, are regulatory measures needed to achieve this objective?**

The Commission's exclusive focus on official language minority communities (OLMCs) in this and the following question is bizarre. “Underserved” communities include more than just OLMCs.

Much is at risk in local markets other than just those local markets with substantial official language minorities. Moreover, there is a risk that in trying to sustain ultimately unsustainable services in OLMCs or even the smallest unilingual markets, other markets, whose services could be sustainable, may get lost.

Ultimately, the ability of any given market to sustain a television service – OLMC or unilingual, the obligations imposed or support provided – is a case-by-case matter. Most Canadians have local television service in their communities today. Some do not. Local TV stations exist today because of commercial and public policy decisions made previously – not all of which will necessarily be appropriate for tomorrow.

This question cannot be answered “in theory”. It requires a market-by-market examination, involving CBC, private and educational broadcasters, community television

and other media. It needs an appreciation of the potential audience for, and economic capacity of markets to support local programming in minority markets and trends going forward. It is not something the Commission should do, in haste, in such a broad proceeding as this.

**Q40. Are OLMCs adequately reflected on television? If not, are regulatory measures needed to achieve this objective?**

Same answer as in Q. 39.

**Q41. Is there appropriate access to a diversity of programming by and for Aboriginal peoples? If not, are regulatory measures needed to achieve this objective?**

As in our response to Q.39, this question cannot be answered “in theory”. It requires a market-by-market examination, involving APTN, Aboriginal radio broadcasters, community television, CBC, private and educational broadcasters and other media. It needs an appreciation of the potential audience for, and economic capacity of markets to support aboriginal programming in markets and trends going forward. It is not something the Commission should do, in haste, in such a broad proceeding as this.

**Q42. Is there appropriate access to a diversity of programming by and for third-language communities? If not, are regulatory measures needed to achieve this objective?**

Similar to our answer to Q.39, this question cannot be answered “in theory”. It requires a market-by-market examination, involving the ethnic local TV, specialty and radio, broadcasters, community television, CBC, private and educational broadcasters and other media. It needs an appreciation of the potential audience for, and economic capacity of markets to support ethnic programming directed to different communities and trends going forward. It is not something the Commission should do, in haste, in such a broad proceeding as this.

Friends understands that the Commission is contemplating a future review of its Ethnic Broadcasting Policy. That would be a far more appropriate proceeding to delve into this matter.

**Q43. What further actions can broadcasters take to improve the accessibility of programming for persons with disabilities, including, but not limited to the accessibility of program guides, regardless of the platform on which programming is broadcast?**

While this is also a case-by-case question, certain observations may be appropriate here.

Over the last two decades, the Commission has vastly increased the obligations on broadcasters to closed caption (now 100%, including caption commercials, PSAs and promos) and descriptive video. These are, now, even standard requirements for the smallest local stations.

While no doubt appreciated by visually and/or hearing challenged Canadians, even these Canadians might accept that, if the consequence of some of these obligations (combined with other negative factors) may be to reduce overall local news or even close stations, they may be excessive. This is particularly the case on obligations to caption commercials, PSAs and promos.

Moreover, the fact that OTT have no such obligations, suggests that at minimum, imposing such obligations on these latter players should be examined before we further increase any obligations on Canadian broadcasters.

**Q44. What are the technical issues and costs of increasing the amount and quality of accessible programming, more specifically described video programming, in the**

system?

No comment.

**Q45. What are the technological barriers to improving the accessibility of features—like described video—to persons with disabilities?**

No comment.

**Q46. How should the Commission and Canadians measure success with respect to ensuring that television services are made available and well promoted to underserved audiences?**

The only appropriate measure of success is that in furthering the objectives of the *Act*, in particular, in this case, sections 3(1)(b) through (j), and (l) through (t).

**Promoting access for non-vertically integrated programming sources**

**Q47. Are measures, such as imposing distribution requirements, undue preference provisions or other measures such as those set out in the VI Code, needed to ensure the availability of non-vertically integrated programming sources and BDUs in the future?**

As a matter of principle, a strong VI code would appear to remain essential now and in the future to protect smaller independent local TV stations, specialty TV broadcasters and BDUs from major vertically-integrated BDUs.

**Q48. How should the Commission and Canadians measure success with respect to promoting fair access for non-vertically integrated programming sources?**

The only appropriate measure of success is that of furthering the objectives of the *Act*, in particular, in this case, sections 3(1)(h) through (h), and (r) through (t).

**Enhanced audience measurement using set-top boxes**

Friends has no expertise or particular views on this matter.

**Q49. Should an STB-based audience measurement system be implemented in Canada?**

**Q50. The Commission invites parties to propose a concrete model for the establishment of an STB-based audience measurement system that maintains the privacy of individual Canadians.**

**Q51. What role, if any, should the Commission play in enabling a STB-based audience measurement system?**

**Q52. What data points can and should be collected?**

**Q53. What methodology should be used to collect data?**

**Q54. If the Commission were to enable the collection and use of such data, what privacy protection methods should be established?**

**Q55. What technical matters must be resolved to establish an STB-based audience measurement system?**

**Q56. What governance model should oversee the operation of such a system?**

**Q57. Does the establishment of an STB-based audience measurement system have implications for resources, funding and cost recovery? If so, what are those implications**

## **Ensuring that television services can be made available while reducing regulation**

### ***Genre exclusivity and protections for Category A services***

**Q58. Are regulatory measures necessary to promote programming diversity? If so, what measures can best achieve this objective?**

Genre exclusivity and protections for Category A services have been key historic regulatory measures to ensure program diversity.

Whether or not such measures are required going forward, Friends suggests this broad hearing is not an appropriate place to consider changing them.

Friends notes that the Commission originally planned to have a proceeding in 2013 devoted to this issue alone. Friends believes that a dedicated hearing on this subject remains the best way to address it, should this proceeding reveal, as we would expect, a significant divergence of opinion on the subject.

If the Commission does choose to address the matter in this proceeding, we would urge “most of all, do no harm”. (Or if you prefer, “if it ain’t broke, don’t fix it.”)

**Q59. What are the implications, both positive and negative, of eliminating the genre exclusivity policy? What would be the earliest feasible timeframe to implement this approach, in light of all the possible implications?**

The potential implications, both positive and negative, of eliminating the genre exclusivity were canvassed extensively in the paper prepared for the Commission by Peter Miller, dated March 2013.

Given the lack of clear evidence of what the outcome would be, and the lack of ability of this proceeding to delve in detail into the issue, we recommend that genre exclusivity not be eliminated.

**Q60. Even in the absence of genre exclusivity, should programming services be required to identify the broad genres of programming they offer to ensure that consumers get the type of programming they expect from those services? What should these broad genres be?**

If the purpose of eliminating genre exclusivity were to “reduce regulation” why would the Commission consider adding new (redundant) regulation in its place?

**Q61. How should the Commission and Canadians measure success with respect to ensuring a diversity of programming?**

The only appropriate measure of success is that in furthering the objectives of the *Act*.

### ***Streamlined licensing***

As these questions relate to the process and criteria for licencees, Friends has only limited expertise and interest, and few comments.

**Q62. Should the current types of licences be consolidated to simplify the licensing process? Are there other ways than the approach set out in paragraph 114 above of simplifying this process?**

Simplification is fine as long as it does not eliminate important distinctions.

Friends is unclear of the rationale behind the proposed change, or its intended consequences. Certainly it would appear to make no sense to eliminate distinctions between Category A, B and C services. The fact that the Commission is proposing this suggests that it has forgotten the historic rationale behind these distinctions.

Category A services were licensed with the expectation that they would make a more significant contribution to Canadian exhibition and CPE than Category B services. The Commission recognized that these services might not be as popular as other mainstream services but nonetheless were in the public interest because of the diversity that they brought to the system. Accordingly the Commission required BDUs to offer Category A services (although to be clear Category A services were not ‘must carry’).

The Commission’s current proposals would seem to contemplate the elimination of the Category A designation while at the same time the Commission is proposing to provide Category C services with essentially 9(1)(h) status. This is particularly puzzling given that it was only a few years ago that the Commission determined that the existing national news services offered by CBC and CTV were doing so well that the genre no longer needed to be protected.

This change of heart seems to be directly related to the emergence of Sun News that, with carriage in over 5 million homes, was not able to garner an average audience that exceeded 16,000 people. While most specialty channels would be delighted to have carriage in 5 million homes this lack of carriage was the basis of Sun News’ 9(1)(h) application which was turned down by the Commission only to be replaced by the Commission’s new Category C policy (which goes even further than 9(1)(h) in terms of protections and benefits for Sun News). Given that so much of the Commission’s entire review of television is ostensibly based on the consumer and reducing the cost of television services, Friends is at a loss to understand how the mandatory carriage of Sun News can possibly be justified.

**Q63. What licensing criteria would be appropriate for the consolidated types of programming services?**

No comment.

**Q64. What licensing criteria would be appropriate for Category C national news specialty services?**

No comment.

**Q65. Should the Commission revise and/or simplify existing exemption orders to take into account a new approach to licensing and, if so, in what way?**

Friends is unclear how could, or why should, exemption orders be simpler than they now are.

**Q66. How should the Commission and Canadians measure success with respect to a streamlined Commission approach to licensing and exemption?**

The only appropriate measure of success is that in furthering the objectives of the *Act*.

**Notifying subscribers of changes to programming services**

**Q67. How can Canadians best be informed of changes to the programming of services to which they subscribe and the ways in which they are packaged?**

This is first and foremost a responsibility of the distributor and presumably one BDUs take seriously and exercise appropriately.

**Q68. Does the Commission need to intervene to ensure Canadians are better informed?**

No.

**Q69. How should the Commission measure success with respect to ensuring that Canadians are adequately informed of changes to programming and how services are packaged?**

The only appropriate measure of success is that in furthering the objectives of the *Act*.

**Enhancing safeguards and controls relating to programming content**

**Q70. Is there a need for better information and tools to provide viewers with enhanced safeguards and controls relating to programming content?**

There does not appear to be a great demand. Since the introduction of the Violence Code and Program Classification System, Canadians seem broadly satisfied.

There is a need to extend such measures to OTT.

**Q71. What additional program information should be available to viewers?**

No additional mandated information would appear necessary at this time.

**Q72. What are the technical issues and costs associated with improving the provision of program information to viewers?**

No comment.

**Q73. How should the Commission and Canadians measure success with respect to enhancing safeguards and controls relating to programming content?**

The only appropriate measure of success is that in furthering the objectives of the *Act*, in particular, in this case, sections 3(1)(e), (h), (l), (m), (s) and (t).

**Enabling a more dynamic market for BDUs**

**Q74. Are any measures needed to promote a more dynamic market for BDUs?**

Friends is unclear what the Commission means by the word “dynamic” and why it is used here. The word “dynamic” appears nowhere in the objectives of the *Broadcasting Act*, and seems entirely irrelevant to the jurisdiction and obligation the CRTC has to “regulate and supervise” the Canadian broadcasting system.

Answering this question in the context of the objectives of the *Act*, Friends is not aware of any new measures needed to this end, at this time.

**Q75. Would measures such as broadening the BDU exemption order be effective in fostering a more dynamic marketplace? What are the challenges associated with these measures and how can they be overcome?**

No, they would be contrary to the objectives of the *Act*.

Exemption levels for BDUs have been steadily raised, and criteria eased, over the past decade. Friends is not aware of any strong case for, or benefit in, raising them further.

**Q76. How should the Commission and Canadians measure success with respect to enabling a more dynamic market for BDUs?**

Fulfilling the objectives of the *Broadcasting Act*, in particular, sections 3(1)(a) through (j) and (t).

**Adopting guidelines for BDU-subscriber relationships and creating recourse mechanisms in the case of disputes**

**Q77. Do Canadians who wish to change service providers face challenges in making that change? If so, what are these challenges? What should be the Commission’s**

**role, if any, in addressing these issues?**

Friends is not aware of a major issue here and has no comment. Friends recommends that, should the Commission deem them worthy of attention, such BDU-specific matters be addressed in a separate proceeding.

**Q78. Should guidelines or a code of conduct addressing issues, such as early termination fees, similar to what was established in the Wireless Code be applicable to the BDU market? If so, what specifically should be included?**

No comment.

**Q79. Is an industry ombudsman with, for example, a mandate similar in principle to that of the Commissioner for Complaints for Telecommunications Services (CCTS) necessary or desirable? If so, what are the costs associated with creating and maintaining an industry ombudsman?**

No comment.

**Q80. How should the Commission and Canadians measure success with respect to empowering Canadians and enabling better BDU-subscriber relationships?**

No comment.